

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 WILMINGTON PT CORP, . Docket No.  
 4 Plaintiff, . 1:19-cv-02035-DG-RLM  
 5 v. . Brooklyn, New York  
 6 PARVINDER S. TIWANA, et . Thursday, January 13, 2022  
 7 al., . 3:00 p.m.  
 8 Defendants. .  
 . . . . .

9  
 10 TRANSCRIPT OF TELEPHONIC PRE-MOTION CONFERENCE  
 11 BEFORE THE HONORABLE ROANNE L. MANN  
 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiff: The Margolin & Weinreb Law Group,  
 14 LLP  
 15 ALYSSA KAPNER, ESQ.  
 16 165 Eileen Way  
 Suite 101  
 Syosset, New York 11791  
 516-945-6055

17 For the Defendants: Pitchayan & Associates, P.C.  
 18 RASHMI ATTRI, ESQ.  
 19 7230 Broadway  
 3rd Floor  
 Jackson Heights, New York 11372  
 718-478-9272

20  
 21 Transcription Service: Opti-Script, Inc.  
 22 P.O. Box 77  
 23 Winfield, PA 17889  
 800-494-7500

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## P R O C E E D I N G S

THE COURT: This is Judge Mann on the line. I'm conducting a telephonic pre-motion conference in Wilmington PT Corp versus Tiwana, et al., 19-cv-2035. We're proceeding remotely because of the pandemic. I hope everyone is safe and healthy. Let me begin by taking the roll call in the case.

Who is on the line on behalf of the Plaintiff, Wilmington PT Corporation?

MS. KAPNER: Good afternoon, Your Honor. My name is Alyssa Kapner from the Margolin & Weinreb Law Group, for the Plaintiff, Wilmington PT Corp, and I realize that I am not on the docket, and I will fix that as soon as we get off.

THE COURT: You are not.

MS. KAPNER: Yes, I will take --

THE COURT: Go ahead.

MS. KAPNER: -- care of that. And a representative for my client is also on the line, his name is Eital Korb.

MR. KORB: Yeah, good afternoon, Your Honor.

THE COURT: Could you please spell your first and last name?

MR. KORB: Yes. It's Eital, E-I-T-A-L, and last name is Korb, K-O-R-B.

THE COURT: I'm sorry, A as in Apple, O-R-B?

MR. KORB: No. K. K.

1 MS. KAPNER: K, as in kite.

2 THE COURT: K, Korb, okay.

3 MR. KORB: Yes.

4 THE COURT: Thank you.

5 And who is on the line on behalf of Defendants, the  
6 Tiwana Defendants?

7 MS. ATTRI: Good afternoon, Your Honor, this is  
8 Rashmi Attri of Pitchayan & Associates, P.C., for the  
9 defendants, Parvinder Tiwana and Jasvir Tiwana. Parvinder  
10 Tiwana is present on the line. Jasvir Tiwana is out of the  
11 country, so she is not able to be present for this  
12 conference.

13 THE COURT: I'm sorry, which one of your clients is  
14 on the line?

15 MS. ATTRI: The first one, Your Honor, Parvinder --

16 THE COURT: Okay.

17 MS. ATTRI: -- Tiwana.

18 THE COURT: All right. Thank you. This is on for  
19 a pre-motion conference in connection with the parties'  
20 intentions to renew their motions for summary judgment before  
21 the newly assigned district court judge, Judge Gujarati. She  
22 has asked me to conduct this pre-motion conference. I would  
23 not be surprised if the entire motion gets referred to me,  
24 although at the present time, I don't know whether that will  
25 be before me for report and recommendation or whether she'll

1 be handling the motion -- the cross motions for summary  
2 judgment.

3 Before I talk about the contemplated dispositive  
4 motions, I'd just like to get a little update, factual  
5 update, from the parties. I take it the Defendants continued  
6 to reside outside the premises, is that correct?

7 MS. ATTRI: Yes, Your Honor. That is correct, for  
8 now.

9 THE COURT: And they live, if I recall correctly,  
10 they live in Florida; is that right?

11 MS. ATTRI: No, Your Honor, that's Virginia.

12 THE COURT: And so they're renting out the  
13 premises?

14 MS. ATTRI: Yes, Your Honor.

15 THE COURT: And I take it there is no dispute that  
16 they have failed to -- they've been in default now for is it  
17 nine years?

18 MS. ATTRI: For the second mortgage, the mortgage  
19 which is the subject of this foreclosure action, it is maybe  
20 Your Honor, since 2000 -- during the economic crash in 2008,  
21 I believe.

22 THE COURT: Now, I have to admit, I was a little  
23 confused when I was reviewing the requests for a pre-motion  
24 conference. I was a little confused given the first mortgage  
25 and the second mortgage and there's a reference in the

1 sentence to the two mortgages and then saying that mortgage  
2 is the subject of this lawsuit. So do I understand, there's  
3 a first mortgage that the Plaintiff has nothing to do with?

4 MS. ATTRI: You are right, Your Honor.

5 THE COURT: Okay. And is that in default?

6 MS. ATTRI: No, Your Honor. First mortgage is  
7 current.

8 THE COURT: Okay. So it's only the second  
9 mortgage, that mortgage that is the subject of this  
10 litigation is in default and has been in default for over a  
11 decade?

12 MS. ATTRI: Correct, Your Honor.

13 THE COURT: And is it the -- what is the  
14 Plaintiff's -- I'm sorry, the Defendant's position that  
15 the -- well, I know there's a standing issue and it seems to  
16 be Plaintiff's position that they, you know, they have the  
17 note and mortgage, they're in possession of it, so what is  
18 the issue with standing?

19 MS. ATTRI: Your Honor, as you know, a motion for  
20 summary judgment was by the Plaintiff filed earlier too, and  
21 they included an affidavit from the Plaintiff. And that  
22 affidavit did not give any details as to the possession of  
23 Northern Mortgage when it was taken into possession.

24 And during the discovery proceedings, we requested  
25 a copy of the original note that we have not seen yet. And

1 then due to the pandemic also all these things got stayed.  
2 So the note and mortgage that was attached with the summons  
3 and complaint was a little bit in favor of a nonparty. Then  
4 there are a lot of endorsement which are undated and blank,  
5 so that is not sufficient enough for Plaintiffs to say that  
6 they have standing to foreclose on this mortgage when  
7 Defendant has raised the standing into issue.

8 Now, they have the burden to establish as their  
9 prima facie case that they have the standing because they  
10 have so many endorsements on this note, and there is no  
11 reference to the date, when the note was transferred from one  
12 bank to another. So between the original lender and the  
13 current Plaintiff there are, I think, four or five  
14 endorsements to different banks of this note.

15 So, it is not clear. And the affidavit that was  
16 included by Plaintiff in their previous motion, that did not  
17 give any reference to the personal knowledge of the person  
18 who was giving that affidavit in support. He did not even  
19 mention the date or that the Plaintiff is in possession of  
20 the note. So --

21 THE COURT: Well, I remember -- I think I saw in  
22 the record and I can't remember whether it was the original  
23 motion, whether it's in Plaintiff's counsel's letter, recent  
24 letter, in connection with the pre-motion conference, but  
25 it's the Plaintiff's position that the Plaintiff is in

1 physical possession of the note and mortgage. And if that's  
2 the case, then whether you have the exact date as to, you  
3 know, when the transfer occurred and even assuming that there  
4 are undated and blank endorsements, what difference does that  
5 make?

6 MS. ATTRI: Mere statement by the attorneys that  
7 they are in possession of the note and mortgage is not  
8 sufficient. That's what I believe, Your Honor, because the  
9 affidavit doesn't -- did mention that -- they give all the  
10 details, and -- but nothing about the possession of the note  
11 and mortgage. Then Defendant filed a cross-motion and  
12 highlighted that. And in opposition to Defendant's  
13 cross-motion, then Plaintiff attached another affidavit, like  
14 it looks like they can add anything into that affidavit,  
15 whatever is required to prove standing. But in the --

16 THE COURT: Well, did you ever ask to see, you  
17 know -- you did point out that we're in the midst of a  
18 pandemic. There have been periods of times between surges  
19 when people have not had to shelter as we are now in the  
20 fourth wave. Did you ever ask -- you say that it's not  
21 enough to rely on counsel's statement, but you could've asked  
22 to actually see the original document. Did you ever ask to  
23 see the original document?

24 MS. ATTRI: Yes, Your Honor. In the original  
25 discovery request, we made the request to inspect the

1 original note.

2 THE COURT: And what was the response to that?

3 MS. ATTRI: The response was that they will  
4 schedule a date for inspection or something like that.

5 THE COURT: So they said you can come and see it.  
6 Did you follow up?

7 MS. ATTRI: After that, Your Honor, when we were in  
8 the motion practice, at that point, I raised that point, too,  
9 regarding the inspection. But what I believe that in one of  
10 the conversations during that motion practice, counsel  
11 was -- I was dealing with the counsel present in the  
12 courtroom today. They were working remotely.

13 THE COURT: Well --

14 MS. ATTRI: All the documents and motion papers  
15 also were sent to each other via email.

16 THE COURT: Well, if they offered to make the  
17 original available for inspection, and you never followed up  
18 to actually take a look and inspect it, then they're not  
19 obligated in connection with either moving for summary  
20 judgment or responding to your motion for summary judgment to  
21 actually attach the original to hard copy form and deliver  
22 them to the Court.

23 If they've made them available for inspection or if  
24 they put in sworn statements about -- that they're available,  
25 then you don't have any contrary evidence. You don't have



1 anything to contradict that the Plaintiff is in possession of  
2 the original note and mortgage.

3 MS. ATTRI: They didn't say that it is available.  
4 They said that they will make it available -- they will make  
5 it available. It was not that some date was scheduled, or  
6 they gave us that on that day you can come to our office, and  
7 it is available. It was not like that, Your Honor. Most of  
8 the stuff we requested in the discovery, that was -- the  
9 response was that it is part of the summons and complaint or  
10 the Defendant already has it. As to inspection of what I  
11 remember, it was something of that -- so that they will make  
12 it available. Then the matter was stayed, too, during  
13 this -- another case which was pending and --

14 THE COURT: Schiffman.

15 MS. ATTRI: Yes, yes.

16 THE COURT: Did someone just join, or did we lose  
17 someone?

18 MS. KAPNER: Yes, Your Honor. My client got  
19 disconnected. He just, I think, came back in.

20 MR. KORB: Yes. Sorry about that.

21 MS. KAPNER: Yeah. Okay.

22 THE COURT: Well, I appreciate the case was stayed  
23 for some period of time, but the stay has been lifted.

24 Let me just hear from Ms. Kapner on this particular  
25 issue, and then I'll follow up with Defense counsel about the

1 other issues, legal issues, to be addressed. Ms. Kapner,  
2 where is the original note and the mortgage at this time?

3 MS. KAPNER: So all the original documents are kept  
4 securely at our client's custodian's custodian. So it's not  
5 the type of thing that, you know, we just have available at  
6 any time, so which is why we stated that we would make it  
7 available on a date and time and we would have done so.  
8 Obviously, we would have to request it, we would have to sign  
9 documents, they would have to be sent to us, it would have to  
10 be sent back to them. So the original document is in  
11 physical possession of our client's custodian on behalf of  
12 our client.

13 If seeing the original note will, you know, change  
14 anything for the Defendants, I don't necessarily know if it  
15 will, I understand what you are saying in the sense that  
16 assuming that we can prove standing, and if we did show them  
17 the original note, then what, what's their next, right? I'm  
18 guessing that's where you were headed. Because even if,  
19 let's just say, in this case, for whatever reason the case  
20 gets dismissed because we, you know -- some minor procedural  
21 whatever it is, ultimately, we can then bring another  
22 foreclosure case and fix whatever.

23 You know, so I don't believe that there are any  
24 issues and I believe that we are able to prove our prima  
25 facia case in this case, but ultimately when it comes down to

1 it, this is a second mortgage. They are current on the first  
2 mortgage. They are renting out the property. And we did go  
3 through mediation where we wanted to try to settle this, and  
4 we weren't able to. That was some time ago; it may have been  
5 in early 2020 -- end of 2019, I believe. You know, we would  
6 be open to reopening those discussions, if they are  
7 interested, but otherwise, you know, I don't -- I'm not  
8 really sure what their end goal is at this point.

9 THE COURT: Well, I said I wanted to limit my  
10 discussion with you, at this point, to the standing issue and  
11 I think you've answered that. Just to clarify, to the extent  
12 that Ms. Attri wanted to see the original documents, she  
13 wouldn't have to go to Plaintiff's custodian's office to see  
14 it. You're saying you could arrange to have it made  
15 available at your office?

16 MS. KAPNER: That's correct.

17 THE COURT: Ms. Attri, would you like to see the  
18 original documents?

19 MS. ATTRI: Yes, Your Honor.

20 THE COURT: When would you like to see them?

21 MS. ATTRI: First, I need to know how much time  
22 Plaintiff's counsel needs to -- I can -- whenever, yes, they  
23 can make it available, I can schedule an appointment to go to  
24 their office and see it there.

25 THE COURT: Well, let me ask you. Once you see

1     them, if you see them and there's nothing to suggest that  
2     they are inauthentic, will that eliminate the standing issue?

3             MS. ATTRI:   Standing issue, yes, Your Honor.

4             THE COURT:   All right.   So what I'm going to do is  
5     before we conclude, I'm going to set a deadline by which the  
6     parties should make arrangements to have Ms. Attri -- to have  
7     the documents delivered to Plaintiff's counsel so the  
8     Defendant's counsel can come at a mutually agreeable time to  
9     see the original documents.   And hopefully that will then at  
10    least eliminate one of the disputed issues in the case.

11            So now let's talk about the remaining issue or  
12    issues.   Ms. Attri?

13            MS. ATTRI:   Yes, Your Honor.   One more thing that I  
14    want to -- either we can go to (indiscernible) or 1304  
15    notice.

16            THE COURT:   I'm sorry.   I'm sorry.   You broke up.  
17    What did you say?

18            MS. ATTRI:   I said that, Your Honor, either we can  
19    go into the statute prerequisite for foreclosure action, or  
20    there is one more factual detail I want to bring to the  
21    Court's attention before that.   This loan was discharged in  
22    bankruptcy and with that -- just a second.   It was done in  
23    2011.   So, the loan has been discharged, both loans, first  
24    and the second loan, which is subject of this foreclosure  
25    action.

1           And the first mortgage alone takes up the whole  
2 equity and value of the property because the first mortgage,  
3 Defendant is current with the first mortgage, which is around  
4 \$1 million at this time, and he is paying on that mortgage.  
5 And the value of the house, we have not done any formal  
6 appraisal, but value of the house is also something similar.

7           So my point here is the Plaintiff only has mortgage  
8 on the property. Note is no longer there; it has been  
9 discharged. Even if they get this foreclosure action, like  
10 summary judgment in their favor, they are not able to sell  
11 this property because the first mortgage holder is still  
12 there, and the Defendant is current with them. So what the  
13 second mortgage holder will accomplish by this foreclosure  
14 action, that I just want to know, considering there is not  
15 much equity left for the Plaintiff.

16           THE COURT: Well, I want to look up the answer  
17 because I was a little surprised to hear you say that the  
18 debt was discharged in bankruptcy. I noted that your letter  
19 had a reference to a bankruptcy discharge, but I thought that  
20 related to earlier obligations, and so this is very  
21 surprising to me. So I'm just looking up your answer. Do  
22 you raise this as an affirmative defense?

23           MS. ATTRI: Not as an affirmative defense, Your  
24 Honor, but in the -- it was in my request for pre-motion  
25 conference. I need to actually -- I need to go back to the

1 answers.

2 THE COURT: Yeah. I'm looking at the answer right  
3 now. I'm up to the ninth affirmative defense, which is the  
4 last one, and it wasn't raised as an affirmative defense.

5 Let me hear what Ms. Kapner has to say in response.

6 MS. KAPNER: Sure, Your Honor. I am not a  
7 bankruptcy expert and so I would need -- but from my  
8 understanding, we are fully permitted to seek a judgment of  
9 foreclosure and sale on this property. What we cannot do is  
10 subsequently seek a deficiency judgment against the borrowers  
11 due to the bankruptcy, which we will not and do not plan to  
12 do.

13 In terms of Ms. Attri's question of the value of  
14 the property and how much is owed on the first mortgage and  
15 there's no equity, et cetera, et cetera and what does my  
16 client plan to do with the property, or any second  
17 mortgage -- let me know if you want me to go into that or  
18 should I just stop at the bankruptcy?

19 THE COURT: No, no.

20 MS. KAPNER: Okay. So --

21 THE COURT: Let me ask you, were you -- -- you seem  
22 to have anticipated this, were -- is it undisputed that the  
23 note was discharged in bankruptcy?

24 MS. KAPNER: No. I don't want to say that because  
25 I don't know the exact terminology. I did see -- I obviously

1 read defendant's cross letter that she's referring to. So  
2 assuming that that is true, I don't want to say whether it  
3 was or wasn't discharged, but I do know that if it was, that  
4 we still are able to foreclose and that we cannot seek a  
5 deficiency judgment. So that is all that I can speak to at  
6 this time on that. So I don't believe that it forecloses or  
7 prevents us from proceeding as we were planning to proceed.

8 THE COURT: Well, what would you expect to get out  
9 of that?

10 MS. KAPNER: If we proceeded with a foreclosure  
11 sale?

12 THE COURT: Yes.

13 MS. KAPNER: So what we have --

14 THE COURT: I take it you're aware of fact that  
15 there's a very substantial first mortgage?

16 MS. KAPNER: Yes. So what would happen is we would  
17 have a foreclosure sale. It would either be sold to a third  
18 party purchaser who would take the property, subject to the  
19 first mortgage and would have to either pay off the first  
20 mortgage, come to some sort of deal with them, you know,  
21 whatever it is, and would become the owner of the property,  
22 and the same would happen if it went back to the Plaintiff,  
23 and the plaintiff became the owner. Whoever purchased it at  
24 the foreclosure sale would purchase it subject to the first  
25 mortgage. That's obviously any one's individual or

1 business's business decision to make, if they, you know -- I  
2 don't really know what to say in terms of that. If someone  
3 thinks that the property is worth it to purchase it with the  
4 first mortgage on it, subject to, then that would be their  
5 right to do so. There's not really much more explanation to  
6 that. My client is --

7 THE COURT: Well, you seem to be suggesting that  
8 there would be a purchaser who presumably would purchase it  
9 for some amount of money. Let's say the amount of money is  
10 the same as the first mortgage --

11 MS. KAPNER: Sorry. I'm going to interrupt you  
12 because it would actually be whatever is owed to the second  
13 mortgage, to my client, is what the judgment amount would be,  
14 so let's just -- I'm just going to throw out a number,  
15 \$100,000 let's just say is the upset bid at the foreclosure  
16 sale. And someone bids \$100,001, and becomes -- they will  
17 purchase the property for \$100,001, subject to the first  
18 mortgage, which may be owed according to Defendant's letter,  
19 \$945,000. So they would have to either come to some sort of  
20 agreement with the first mortgage to pay it off, you know,  
21 whatever it is, and then they would own the property.

22 THE COURT: So you're saying that the way this  
23 would work would be that since you haven't joined whoever  
24 holds the first mortgage, if there is a foreclosure, the  
25 property would be taken subject to that first mortgage, but



1 the proceeds of the sale, since you're the Plaintiff,  
2 would -- even though you hold -- you have a junior lien, the  
3 proceeds would come to your client. And the first mortgage,  
4 the property would be taken subject to the first mortgage?

5 MS. KAPNER: Yes. So whoever purchased the  
6 property would be responsible for the first mortgage.

7 THE COURT: So you would get paid first then?

8 MS. KAPNER: Yes, because our loan is in default.  
9 So, it's not really a first or second. If the first mortgage  
10 was not current and it was foreclosing, it would name us,  
11 since we're subject to it, trying to cut us off, but we can't  
12 cut the first off because we're subject to it. So if the  
13 first had a sale and there was, you know, let's say \$100,000  
14 more in the purchase than it was owed, then my client could  
15 potentially try to, you know, go after some of that money.  
16 But it doesn't work the reverse way because the first is  
17 always going to be ahead of the second. I'm not sure if I'm  
18 explaining that correctly.

19 But, the reason why, in these cases, where there's  
20 a second mortgage we try really hard to settle when the first  
21 mortgage is current because it's possible, if the foreclosure  
22 now comes to fruition, that the borrower is going to lose  
23 their property for failure to pay the second mortgage when  
24 all this time they're putting money into the property paying  
25 the first mortgage. So it makes sense for everyone to settle

1 it.

2 THE COURT: All right. Ms. Attri, so the Defense  
3 position is that even assuming that there was a discharge in  
4 bankruptcy that nevertheless, the mortgage has not been  
5 expunged and that the Plaintiff can still seek foreclosure.  
6 I would think that would not be in your clients' interest to  
7 allow that to happen?

8 MS. ATTRI: What I believe, Your Honor, that  
9 Plaintiff counsel's approach is very impractical that someone  
10 will purchase this property subject to first mortgage and  
11 then pay off the second mortgage. Legally wrong, too,  
12 because the first mortgage holder will always have the  
13 priority. They are the first lienholder and they have the  
14 first right on the property, and they are current.

15 Yes, at this time, it has not been expunged, but  
16 then Defendant always have that option of going back to  
17 bankruptcy court and request the Court to expunge the second  
18 mortgage, considering there is no equity for the second  
19 mortgage.

20 And I just want to add that this bankruptcy  
21 discharge has been discussed extensively during the mediation  
22 and at the point where Plaintiff filed a notice of appeal to  
23 the Circuit Court and the matter was discussed with the judge  
24 there before the appeal was perfected, extensively, that  
25 there is nothing left for the second mortgage holder.

1           And at that point, actually, Mr. Weinreb, he  
2           appeared -- I don't know whether Alyssa was there in the  
3           conference or not, and he said that Plaintiff  
4           doesn't -- Plaintiff knows that the note will not get  
5           anything in here, but they just want to foreclose. They just  
6           want to foreclose on this property. And they were fully  
7           aware at that point, they said that, yes, second mortgage  
8           holder will not get anything, it has been discharged.

9           So Plaintiff's counsel has been well aware of this  
10          discharge, that this loan has been discharged and they have  
11          acknowledged this loan, that there is only a mortgage on the  
12          property. Loan has been discharged long time ago.

13          THE COURT: All right. Well, whatever the  
14          Plaintiff's motive, if they do -- whether they end up with  
15          something or not, it would not be in your client's interest  
16          to have this -- have them foreclose on this property.

17          MS. ATTRI: Yes, Your Honor. If they still go to  
18          get a judgment of foreclosure and try to sell the property  
19          and foreclose, that's the only option left with the different  
20          entities to expunge this loan, the second mortgage.

21          THE COURT: Well --

22          MS. ATTRI: In case they are able to get a  
23          judgement of foreclosure instead.

24          THE COURT: Your clients are living in Virginia; do  
25          they have other property in Virginia?

1 MS. ATTRI: There was a reason actually at this  
2 time, Your Honor, when they -- they were living in this  
3 property. It was their primary residence in 2005. They had  
4 to leave that in 2008 when the business closed down. They  
5 lost their job. So they had to move in Virginia.

6 And now the kids were taking care of the business  
7 there. So they were planning to move actually when this  
8 action started. We've shown that to the Plaintiff's counsel,  
9 again, but all this pandemic and that happened. But that was  
10 always the intention of coming back, because they -- a huge  
11 down payment was made at the time of this house, like 100,000  
12 or something.

13 Then they had to leave; property was occupied by  
14 the squatters for 10 years almost. And they had to fight a  
15 long battle in the landlord-tenants court. They spent money  
16 there; applied for loan modification for the first mortgage.  
17 So still 2019, they spent a lot of money to bring this  
18 mortgage back on track, the first mortgage. And they started  
19 making the payment after going through the landlord-tenant  
20 process. Going through the foreclosure on the first and the  
21 loan modification process.

22 And thankfully the first mortgage holder -- they  
23 had to actually forgive 400,000 to bring the mortgage equal  
24 to the value of the house. It was, like, 1.4 million because  
25 of the seven, eight years default. So they forgave 400,000

1 principal and brought it equal to the value of the house.

2 And so now they are making mortgage payments for now for  
3 three years.

4 So it's not that they just have collecting rent.  
5 That's not the case, Your Honor. The whole scenario can give  
6 that impression, that they are living far away in Virginia  
7 and just collecting rent, but during the time from 2008 until  
8 2018, I think they were not getting anything actually.  
9 People were occupying the property and it took a long time to  
10 evict them, and then have new tenants who can make the  
11 payment and then mortgage can be maintained.

12 THE COURT: So what are they getting -- what's the  
13 amount of rent that they're collecting?

14 MS. ATTRI: It is actually breaking even at this  
15 time, Your Honor. It is a little -- normally, when the loan  
16 modification process was completed, it was like that, but not  
17 receiving the complete rent because of the moratorium,  
18 hopefully they will be receiving the full rent. And at the  
19 same time, they are intending to come back too. So they  
20 would require -- it is a two-family house, and they would  
21 require one unit for themselves, too.

22 THE COURT: Are they renting out both units?

23 MS. ATTRI: At this time, yes, the units are rented  
24 out.

25 THE COURT: Both of them?

1 MS. ATTRI: Yes. Yes, Your Honor.

2 THE COURT: And do they own property in Virginia?

3 MS. ATTRI: Yes, Your Honor.

4 THE COURT: Are either of them working?

5 MS. ATTRI: The husband is working. Wife, she is  
6 out of the country at this time. I do not know. At one --

7 THE COURT: Well, I'm prepared to go forward with  
8 this pre-motion conference, but it seems to me that it would  
9 make sense for the parties to try to resolve this case rather  
10 than throwing money to the lawyers to litigate a case that at  
11 the end of the day, you know, perhaps it's just a matter of  
12 the Defendants continuing to delay the inevitable, and maybe  
13 that's fine by them. But if they really intend to move back  
14 to this house, it sounds like there's a good chance that the  
15 house is not going to be theirs, even though they have  
16 managed to stay current with the -- you know, on their first  
17 mortgage.

18 Ms. Kapner, what is the amount allegedly due at  
19 this time?

20 MS. KAPNER: At this time, I cannot answer that  
21 because we haven't -- Eital, are you still there?

22 THE CLERK: Yeah. I didn't want to interrupt  
23 earlier. I think Mr. Korb dropped off a couple of minutes  
24 ago.

25 MS. KAPNER: Oh, okay. Okay. I can give you the

1 amount as of the time we filed the complaint, which was now  
2 almost three years ago. I'm sorry. I was not expecting to  
3 need that information, but -- hold on, having technical  
4 difficulties. As of January 2019, the amount was  
5 approximately \$259,000. So the interest obviously has been  
6 accruing since then.

7 THE COURT: And in the course of the mediation or  
8 any other settlement discussions, has there been any talk  
9 about a loan modification?

10 MS. KAPNER: Well, that is something that our  
11 client did offer and I'm sure would be open to reopening  
12 those conversations. Defendant was, if I recall correctly,  
13 not amenable to that. You know, the interest on the original  
14 note I'm looking at right now was 11.75 percent. So that's  
15 the interest rate that it's been accruing at this whole time.

16 I would guess that an interest rate that my client  
17 would offer would be less than that for modification, and we  
18 can definitely work together to come up with something that's  
19 affordable. Again, I am happy to proceed with the motion  
20 practice, but based on what Ms. Attri's saying, it seems that  
21 the Defendants want to remain owners of the property, which  
22 the only way for them to do so is to settle this case with  
23 us.

24 Eventually, the house is going to be foreclosed on  
25 if that's not the case, unless, you know, they have some

1 bankruptcy loophole that they want to go through, then I  
2 don't -- I think they should spend their time and money on  
3 that, if they think they can, you know, wipe out our mortgage  
4 completely. So I'm just a little bit confused as to what the  
5 end goal is for the Defendants because I know what our end  
6 goal is, is to foreclose or modify, or resolve it in some  
7 other way. So I know we had a --

8 THE COURT: Well, what kind of -- Ms. Attri  
9 suggested that through bankruptcy, if they were to file for  
10 bankruptcy yet again and there would not be a prohibition on  
11 that, given the length of period that's elapsed since the  
12 last one, could they get the mortgage wiped out?

13 MS. ATTRI: Your Honor, first thing regarding the  
14 settlement, yes, we had the discussion regarding the  
15 settlement. I just wanted to address that.

16 As to loan modification, the number that counsel is  
17 giving, 11.7 percent interest on the note of 259,000, these  
18 are the numbers on the note, but the note has been  
19 discharged. And we are here talking about the mortgage on  
20 the property, like what they can recover based on that  
21 mortgage. And mortgage is only up to the value of the  
22 property remaining after the first mortgage.

23 So we cannot stick to those 11.7 interest rate on  
24 the note, which is no longer in existence, that we have to  
25 keep in mind has been discharged. And as the counsel said,



1 they are not planning to get the money on the note which has  
2 been discharged according to the bankruptcy law.

3 Secondly, at that point, when there was actually  
4 negative equity, we did try to offer -- at that point,  
5 Defendant had the money to offer, I cannot say for now,  
6 \$8,000 as a lump sum payment to resolve this. Because as  
7 Plaintiff counsel just said that if they foreclose, whatever  
8 they can get after paying the first mortgage, that's what  
9 they are entitled to.

10 So based on that mortgage, we offered \$8,000 lump  
11 sum amount, which was three years ago, to resolve this matter  
12 for everything. If we go into loan modification, they are  
13 already paying \$7,000 on the first mortgage and then on top,  
14 they have to pay \$500 or \$1,000 with that kind of interest  
15 rate or maybe lesser than that is not affordable to the  
16 Defendant.

17 Secondly, as to the bankruptcy --

18 THE COURT: Ms. Attri, I had ask Ms. Kapner a  
19 question and I didn't get an answer because you just cut off  
20 my question and hopped right in there. Before I put that  
21 question again to Ms. Kapner and then I'll hear again from  
22 you, I just want to respond to the argument that because the  
23 note has been discharged, it's not a modification of a  
24 discharged note. And I take your point on that; however, it  
25 would -- so it wouldn't be a loan modification. It basically

1 would be a discussion to see whether the parties can agree on  
2 entirely new terms.

3 So but let me turn back to Ms. Kapner now. I  
4 wanted to hear your response to Ms. Attri's suggestion that  
5 through a new bankruptcy the mortgage could be wiped out. Is  
6 that accurate?

7 MS. KAPNER: Again, I'm not a bankruptcy expert. I  
8 believe that there are certain motions that a borrower or a  
9 creditor -- debtor, I'm sorry, can file in bankruptcy court.  
10 We would obviously oppose that. I don't know. But if they  
11 think that they are able to do that -- I would do that if I  
12 thought that I could.

13 If I represented the borrowers, I -- we will oppose  
14 whatever motions are brought, we will file motions to lift  
15 the stay. You know, since the debtor is really in the  
16 position of, you know, doing what they want or need to do in  
17 the bankruptcy, we would just go off of whatever they file.  
18 So it's not definite that if they file whatever motion in  
19 bankruptcy court that they would be able to wipe us out, but  
20 they can certainly attempt to. So I'm not, you  
21 know -- that's the best answer I can give.

22 THE COURT: Okay. Ms. Attri, I think before I  
23 interjected that I wanted to get an answer from Ms. Kapner, I  
24 think you were about to say something about a bankruptcy  
25 proceeding?

1 MS. ATTRI: Yes, Your Honor. I was saying that as  
2 to bankruptcy proceedings, Defendants will file a Chapter 13,  
3 try to reorganize -- actually, reaffirm the first mortgage  
4 and try to expunge the second mortgage, considering there is  
5 no value to the -- for the equity available for the second  
6 mortgage.

7 As Ms. Kapner also said that the Court will decide  
8 or how they're going to oppose, that's something I can't  
9 comment at this point, but yes, that can be another recourse  
10 for the Defendant if the Plaintiff is just adamant to  
11 foreclose and even if they are not getting anything, they  
12 just want to take it from the borrower, from the Defendant.

13 MS. KAPNER: I'm sorry. I really don't know how  
14 to -- that's not really an accurate, you know, portrayal of  
15 the situation, but I would -- I don't know what -- where  
16 they're at, at this point, if they are going to file  
17 bankruptcy. And they obviously have a right to do so. If  
18 Your Honor, if we -- you think it would be helpful for us to  
19 have a settlement conference before Your Honor, we would  
20 certainly be amenable to that, otherwise we are happy to  
21 proceed with the summary judgment for --

22 THE COURT: Well, I don't know that a settlement  
23 conference beyond -- I mean, I took this opportunity while I  
24 had the parties together and I hope Mr. Korb has dialed back  
25 in, but I don't believe I've heard -- I mean, Ms. Kapner, if

1 you could shoot him an email or text and ask him to dial back  
2 in.

3 But I don't know. You know, I've tried to explore  
4 with the parties the possibility of getting this case  
5 resolved. This is the kind of case that is not going to be  
6 resolved unless both sides are really open to it, and that  
7 would mean for the Defendants to provide financial  
8 information, which would not be part of discovery in this  
9 case. But if they'd be willing to provide financial  
10 information for settlement, you know, with the understanding  
11 that that's for settlement purposes only, then maybe that  
12 would open up a dialogue about either entering into a new  
13 loan. Or if they're unwilling to do it, then the Plaintiff  
14 could determine whether the Plaintiff is prepared to accept a  
15 modest amount to resolve this case because the Defendants  
16 don't have a lot of money. And at the end of the day, either  
17 the Plaintiff prevails, then it's going to be very costly to  
18 get to that point. And at the end of the day, it's not going  
19 to be cost effective.

20 Mr. Korb, did you dial back in?

21 MR. KORB: Yes, because I lost connection again,  
22 I'm sorry.

23 THE COURT: Okay. Thank you for dialing back in.  
24 In any event, I was just encouraging the parties to try to  
25 reopen a dialogue about settling this case. Ms. Kapner had

1 indicated that she would be -- that the Plaintiff would be  
2 prepared to participate in the settlement conference, and I  
3 was saying -- and she can explain to you what I  
4 described -- that at this point I think it's really up to the  
5 parties, initially, to have a dialogue and for the Defendants  
6 voluntarily to produce financial information for settlement  
7 purposes only.

8 But I'm going to assume that the case isn't going  
9 to settle and therefore I'd like to proceed further with the,  
10 you know, the pre-motion conference. We've addressed the  
11 issue of standing, which may be eliminated if the Plaintiff  
12 makes available for inspection the original note and  
13 mortgage. I guess at this point the note is irrelevant if in  
14 fact it's been discharged, but the parties should probably  
15 explore that as well. And why don't we talk about the other  
16 issues that the Defendants are raising in defense of the  
17 foreclosure.

18 Ms. Attri?

19 MS. ATTRI: Yes, Your Honor. The second  
20 affirmative defense was -- I don't not know the number, but  
21 yes, another basis for our motion to dismiss is RPAPL 1304, a  
22 condition precedent for any foreclosure action plaintiff has  
23 not complied with. Plaintiff has provided a copy of some  
24 receipts, but these receipts are not stamped. And if you go  
25 by the tracking number, nothing shows up. And in the prior

1 motion, plaintiff filed an affidavit with a different  
2 tracking number, with the different -- it was all  
3 disorganized to prove that the 1304 notice was sent.

4 And another way to prove was to give the office  
5 practice of mailing. So plaintiff did provide their practice  
6 of mailing these 1304 notices, but the affidavit didn't say  
7 whether that practice was followed in this case to the full  
8 extent. It doesn't give any detail as to those return  
9 receipt, like whether they received it, when did -- actually,  
10 there is no proof that it was received by the Plaintiff or it  
11 was put in the mail. That is all part of the affidavit.  
12 Plaintiff's own affidavit, that they have not given -- they  
13 have not proved that in this particular case, 1304 notice was  
14 made according to their office practice, explaining that  
15 affidavit.

16 THE COURT: Well, are you suggesting that what's  
17 required is an affidavit from someone saying, in this  
18 particular case, I recalled that I followed the office  
19 practice?

20 MS. ATTRI: In this particular case, yes, Your  
21 Honor. The person who gave the affidavit, she said that she  
22 has personal knowledge, and she gave the tracking number, the  
23 mailing done by certified mail, but the copy of the envelope  
24 attached had different tracking number and the affidavit was  
25 saying a different tracking number. So there were

1 inconsistencies in the tracking number provided as a copy of  
2 the envelope and the tracking number given in her affidavit.

3 THE COURT: And then there was a revised affidavit  
4 signed thereafter that said there were three digits that were  
5 off out of multiple digits and there was an error. So there  
6 was a subsequent affidavit filed.

7 MS. ATTRI: Yes. After it was pointed out, then  
8 she said that, yes. So how can we believe that it was her  
9 personal knowledge, the person who mailed it, giving a  
10 different tracking number? Another thing is, the office  
11 practice, Your Honor, that after it was mailed, it is put in  
12 the -- they have some mailbox taken by USPS, and then they  
13 receive the return receipt and it is put into the system with  
14 that client's copy. Nothing of that sort explained regarding  
15 this particular case. They give a general practice, but no  
16 proof that the same practice was followed in this case, too,  
17 the later portion.

18 THE COURT: Well, doesn't Schiffman say that proof  
19 of mailing, the proof of the particular practices is  
20 sufficient, that you're not -- the likelihood that someone is  
21 going to have an independent recollection of what they did  
22 years earlier, it's not required. You're saying you  
23 want -- there was sworn statement about the office practices,  
24 but there wasn't a sworn statement that in this particular  
25 case, I remember that I followed the practices and posted and

1 how I posted these particular notices. That's not required  
2 by the New York Court of Appeals in Schiffman.

3 MS. ATTRI: Your Honor, they gave the recollection  
4 of this case, too. First, they explained the general office  
5 practice, and then they gave the recollection of this  
6 particular case, but they went to a certain extent and then  
7 they left it there. So Plaintiff themselves started  
8 explaining that how this case also followed the same office  
9 practice, but then in the end, they did not show how this  
10 case also followed the same office practice.

11 THE COURT: Well, let me ask you this; assuming  
12 that with the inconsistencies, you have called into question  
13 whether or not notice was sufficient, what is the upshot of  
14 that? You seem to suggest that you would be entitled to  
15 summary judgment dismissing the complaint, but wouldn't that  
16 simply lead to a conclusion by the Court that there are  
17 material issues of fact? We need to hear from the affiant  
18 for the Plaintiff and from the Defendant regarding whether or  
19 not this notice was properly made and whether or not it was  
20 received. Isn't that the ramification, even if you succeed,  
21 even if it could be said?

22 And I'm looking at the Schiffman case. The New  
23 York Court of Appeals said to rebut the -- they talked about  
24 the nature or extent or departure from stated office routine  
25 necessary to rebut the presumption that the practice was



1 followed, and they said that there must be proof of a  
2 material deviation from an aspect of the office procedure  
3 that would call into doubt whether the notice was properly  
4 mailed impacting likelihood of delivery to the intended  
5 recipient. To put it another way, the crux to the inquiry is  
6 whether the evidence of the defect can cast doubts on the  
7 reliability of the key aspect of the process, such that the  
8 inference that the notice was properly prepared and mailed is  
9 significantly undermined. Minor deviations of little  
10 consequence or insufficient.

11 So isn't that suggesting that if you call into  
12 question the presumption, if you undermine it, then doesn't  
13 it become a question of fact for the fact finder to determine  
14 after hearing from the parties?

15 MS. ATTRI: It is actually, Your Honor, the -- this  
16 is the prerequisite for any foreclosure action. And there  
17 are cases recently -- I understand what you are saying,  
18 summary judgment requires that there is no triable issue of  
19 fact. But there are cases where the courts have dismissed the  
20 case just because the condition has not been complied with by  
21 the plaintiff.

22 THE COURT: Well, I don't know. I'm sure there are  
23 cases in which the evidence is patently deficient, but here  
24 you have, as you put it, inconsistent information. You're  
25 saying that that's fatally defective, but doesn't it then

1 become a question as to whether the revised affidavit cures  
2 that and whether or not the fact finder can rely on the  
3 explanation that I made a scrivener's error in the first  
4 affidavit?

5 MS. ATTRI: But at the same time, Your Honor, there  
6 is an affidavit from the Defendant, too, that they did not  
7 receive it. We were going into the details of whatever is  
8 required to prove the 13, because there is a presumption they  
9 have provided those receipts, though unstamped. But at the  
10 same time, there is an affidavit from the Defendants, too,  
11 they did not receive 1304 notice.

12 THE COURT: Well, I know the notices are in the  
13 record. I don't have them in front of me at the present  
14 time. Were those mailed to the property itself?

15 MS. KAPNER: Yes, they were, Judge.

16 THE COURT: And remind me, Ms. Kapner, when were  
17 the notices mailed?

18 MS. KAPNER: They were mailed on or about January  
19 2nd, 2019.

20 THE COURT: So in other words, when the Defendants  
21 were residing in Virginia?

22 MS. ATTRI: Yes, Your Honor, but the Court --

23 MS. KAPNER: I don't know.

24 MS. ATTRI: Okay. I want --

25 THE COURT: Ms. Attri --

1 MS. ATTRI: Yes. Yes, Your Honor, but they do go  
2 to the property at least once in a month to collect their  
3 mail and for the maintenance purposes. I do not know now at  
4 this time how frequently they go to the property, but they  
5 used to go to the property once in a month or sometimes two  
6 times in a month because at that time, that was the time when  
7 they were trying to get rid of those squatters and trying to  
8 maintain the property back and applying for loan  
9 modification. All that process was going on.

10 MS. KAPNER: Your Honor --

11 THE COURT: Ms. Attri, did the Defendants advise  
12 the plaintiff that they weren't residing at the property?

13 MS. ATTRI: At what --

14 THE COURT: Ms. Attri?

15 MS. ATTRI: Yes, Your Honor, I'm here. You are  
16 saying, Your Honor, during this foreclosure process?

17 THE COURT: Before January 2nd of 2019, you said  
18 they were engaging -- prior to that time, they were engaged  
19 in negotiations?

20 MS. ATTRI: I'm not sure, Your Honor. They were  
21 receiving the notices at their Virginia property, too, but I  
22 believe this foreclosure action, 1304 notices, and the copy  
23 attached with the summons had the subject property address,.  
24 And for the first mortgage, I'm sure they were receiving  
25 notices at the Virginia address. I'm not sure about this one

1 because this mortgage was dormant, Your Honor, since 2008.  
2 There was not a single notice until 2019 when Plaintiff  
3 started this action.

4 So I don't believe they were receiving any notice  
5 or anything. They came to know about this -- they were aware  
6 of the second mortgage, but nothing was happening, it was  
7 completely inactive. And in 2019, the summons and complaint  
8 came into picture. So I don't believe there was any  
9 correspondence. I do not know, Your Honor, actually. I do  
10 not know what should I answer here, but there was no  
11 correspondence, according to my knowledge, between the  
12 Defendant and the Plaintiff, as there were many transfers  
13 too. So there was no correspondence with the Plaintiff, for  
14 sure.

15 THE COURT: Just so I understand it, until this  
16 lawsuit was filed, your clients, Ms. Attri, just thought that  
17 there was -- you described the second mortgage as dormant,  
18 there had been no discussions with Plaintiff?

19 MS. ATTRI: Correct, Your Honor.

20 THE COURT: Ms. Kapner, is that accurate?

21 MS. KAPNER: I don't know if there were any  
22 communications prior to 2019 with my client or any  
23 predecessors.

24 MS. ATTRI: I just want to give one  
25 actually -- maybe that can help or that can give that answer.

1 Defendant has not been paying the second mortgage and the  
2 first mortgage since 2008 or '07 when they defaulted. And so  
3 but the summons and complaint has a default date of 2013 to  
4 bring it within the six-year statute of limitations. But  
5 before 2013, too, Defendants were not paying. And so there  
6 was no correspondence regarding second mortgage. Like it was  
7 kind of when Defendants came to our office with the summons  
8 and complaint, they were not even -- they forgot completely  
9 and then this summons and complaint came. And then they  
10 realized that, oh, there was a second mortgage, but there was  
11 not at all any payment or any notices since 2008. That's why  
12 when we saw the summons and complaint, it has the default  
13 date 2013, but before that, too, they were not paying.

14 THE COURT: All right. Ms. Kapner, is there  
15 anything you want to say in response to the argument about  
16 the adequacy of notice?

17 MS. KAPNER: Just that we believe that the notices  
18 have been adequately sent and we will provide evidence of  
19 that in our forthcoming motion, should our request be  
20 granted.

21 THE COURT: Well, I'll ask you the same question I  
22 asked Ms. Attri; isn't there a factual dispute here, and  
23 given the inconsistencies -- I appreciate that if you put  
24 that evidence in, it may be sufficient to defeat the  
25 Defendant's motion for summary judgment, but are you

1 suggesting that the Plaintiffs would be entitled to summary  
2 judgment?

3 MS. KAPNER: Your Honor, I mean, I see that we're  
4 sort of arguing the prior motion that was filed, but I  
5 believe that that motion is no -- is a moot motion, so we'll  
6 be submitting all new documentation.

7 THE COURT: You might well, but Ms. Attri, in  
8 response to your motion or in reply to your opposition, will  
9 put in the prior affidavit and say that this affiant is  
10 giving inconsistent information.

11 MS. KAPNER: If that is found by the Court, if the  
12 Court agrees with her, then I do believe that would be a  
13 triable issue of fact. That, you know --

14 THE COURT: Well, what about the fact that not only  
15 has the affiant given inconsistent information, but the  
16 Defendants deny receipt and they haven't been living at that  
17 property for some time so that there is at least -- it's not  
18 a situation where someone lives at the property and just  
19 says, I never got it delivered, but someone hasn't been  
20 residing there and there have been no discussions among the  
21 parties before, you know, it was sent to a property that they  
22 had vacated years earlier?

23 MS. KAPNER: Yes. So --

24 THE COURT: Doesn't that create a factual dispute?

25 MS. KAPNER: Well, in terms of receiving the

1 notices, that's not required. All that's required is proof  
2 of mailing of the notices, so that's on that point.

3 THE COURT: It's not necessary, but that doesn't  
4 mean that there isn't a factual issue under the  
5 circumstances.

6 MS. KAPNER: That may be the case. I believe that  
7 according to the relevant law, that whether or not they  
8 received it is not relevant to whether it was properly mailed  
9 and whether or not 1304 was complied with properly.

10 THE COURT: Well, again, I don't know that it's  
11 fair to say it's irrelevant because there are enough issues  
12 that have been raised about whether the mailing was  
13 sufficient, coupled with the denial of receipt. So it's not  
14 irrelevant.

15 MS. KAPNER: Okay. And in terms of the -- where  
16 they were living at the time, unless the Defendants provided  
17 proof of their change of address, then there's no way for us  
18 or a predecessor to be aware that they no longer lived there.  
19 In addition, Defendant's attorney just admitted that they  
20 were getting their mail at the property on a regular basis.

21 THE COURT: But they say they didn't get this  
22 notice. But I agree with you that if they didn't provide the  
23 address, the Plaintiff wouldn't have known where to reach  
24 them, but isn't that in part a function of the fact that  
25 neither Plaintiff nor its predecessor -- that nothing had

1 been done, that they were in default from 2008. They hear  
2 nothing from the mortgage holder and the first thing they  
3 find out is they're served with process in -- what year was  
4 this? This was 2019 when they had been in default in 2008.  
5 So what would be their reason to provide your client -- they  
6 may not have even known that your client acquired the  
7 mortgage. Why would they notify Plaintiff where they were  
8 living?

9 MS. KAPNER: Well, I don't know -- I don't want to  
10 agree with the fact that there was no communication from any  
11 of my client's predecessors because I am not aware if that is  
12 true or not. Also, we know that they filed bankruptcy in  
13 2011, which is after the date that they say they defaulted,  
14 and they obviously listed the second mortgage. So, you know,  
15 the fact that they're saying we borrowed  
16 \$100-something-thousand and we just forgot that that existed  
17 and that's their defense, basically, is a little bit, you  
18 know, ludicrous, I think.

19 I think that we, if Your Honor agrees, should  
20 proceed with the motion practice, and, you know, if  
21 Defendants have evidence to prove that they received  
22 communication, didn't receive communication, then we  
23 would -- you know, that would obviously come into play to  
24 determine whether or not these letters should have been sent  
25 to another address, but I don't believe that was raised in



1 their answer or in their prior motion.

2 THE COURT: I don't think they raised it to say  
3 that therefore the mailing was improper because it was to the  
4 wrong address. I was just suggesting that that is an  
5 explanation. Well, the lack of -- I take it you don't know  
6 one way or the other -- let me withdraw that.

7 Was there any communication between Plaintiff and  
8 Defendants before this notice was sent out in 2019?

9 MS. KAPNER: I do not know.

10 THE COURT: Mr. Korb, do you know?

11 MR. KORB: I'm going to say we (indiscernible)  
12 service through SCI and they usually send a hello letter, you  
13 know, when the loan is bought with them. And I'm pretty sure  
14 that the previous owner of the note had this with SCI. So  
15 usually SCI sends a notice and statement and so the borrower  
16 should have received the statement and the hello letter from  
17 SCI. I'm going to check because I might have a copy of it --

18 THE COURT: Well, I'm curious. You talked about  
19 monthly statements, but my understanding, which I didn't know  
20 until this hearing, there are -- the debt was -- the note  
21 itself was wiped out, so there's -- although there is a  
22 mortgage, there is not a note. So what monthly statement  
23 would there be? Maybe there is, but I'm trying to educate  
24 myself on what happens when the note is extinguished but not  
25 the mortgage.

1 MS. KAPNER: Your Honor --

2 MR. KORB: Go ahead.

3 THE COURT: Ms. Kapner?

4 MS. KAPNER: Yes, no. I just wanted to clarify,  
5 because I couldn't really hear Eital. It was a little, like,  
6 fuzzy. So what I think he was saying was that usually when  
7 notes are sold and purchased, there's what's called a goodbye  
8 letter and a hello letter sent to the borrower, which  
9 basically says hi, like, either we're no longer servicing  
10 your loan as of this date and then another letter that would  
11 say, hello, we're your new servicer, we will be servicing  
12 your loan as of this date.

13 Is that what you were talking about, Eital?

14 MR. KORB: Yes. Correct. So I'm just looking, and  
15 the hello letter was sent by SCI in 2018.

16 MS. KAPNER: Okay. So basically a letter from the  
17 servicer of the Plaintiff was sent to the borrowers saying we  
18 are now the new servicer of your loan, et cetera, et cetera.  
19 So that would've been their indication or notice that the  
20 loan -- you know, this is who you should reach out to  
21 regarding this loan.

22 THE COURT: Well, the question, the follow-up  
23 question I was asking and -- was there is no loan, though?  
24 The note has been extinguished. So I was asking Mr. Korb  
25 whether if there's no longer a note, is there still a hello

1 letter and goodbye letter. And he just indicated there was  
2 one sent by the predecessor in 2018 and I was surprised to  
3 hear that.

4 Ms. Kapner, what is --

5 MS. KAPNER: Your Honor, I want to be completely  
6 honest. Regarding that note being discharged, all the  
7 bankruptcy stuff, I really don't know enough at this time to,  
8 you know, confirm that it was discharged, that there is no  
9 longer a note, that, you know, all this stuff that we're  
10 talking about. I don't want to, you know, state that that is  
11 the case because I really need to do some more research, talk  
12 to our bankruptcy counsel. So I would rather not speak to  
13 that this point.

14 THE COURT: And Ms. Attri, your client is on the  
15 line. Did your client get a goodbye letter or a hello  
16 letter?

17 MS. ATTRI: Not specifically this letter, but I  
18 asked him if there was any correspondence from the bank. He  
19 was not aware of -- maybe he can go into his -- because that  
20 was a long time ago. He can go into the -- in his paperwork  
21 and check, but -- do you want me to ask him, Your Honor?  
22 I --

23 THE COURT: Well, why don't we do this? I mean, I  
24 think we should wrap this up now. We've been having these  
25 discussions for an hour and a half now, but I hope that

1 everyone who has been participating realizes that there are a  
2 lot of questions and a lot of work that still has to be done.  
3 I mean, Ms. Kapner said that she needs to do some research,  
4 talk with the bankruptcy attorney. I mean, this is a case in  
5 which discovery concluded quite a while ago.

6           There was a motion for summary judgment and yet  
7 there are all these questions that no one is able to respond  
8 to. And yes, if the parties want to confer and reopen  
9 discovery, but does it really make sense, or should you be  
10 focusing your efforts on trying to get this case resolved?

11           I think what it makes sense to do at this time and  
12 I'll throw this proposal out and then if you disagree with  
13 me, you know, I'll reconsider, but I think I should give the  
14 parties a month to confer with one another further to do  
15 whatever research you need to do. And if you're unable to  
16 resolve the case or make progress on a resolution, then you  
17 can jointly propose a briefing schedule.

18           I don't know whether you want to have a  
19 simultaneous exchange of motions for summary judgment or  
20 whether it makes more sense to have one party go first. And  
21 if you need to have, you know, four rounds rather than the  
22 usual three so that the one party would be the movant, the  
23 other party would be the opponent and cross-movant. And so  
24 you'd have a reply to the original motion and then a reply to  
25 the cross-motion. So that's what I would propose we do now.

1 Ms. Kapner, do you have another suggestion?

2 MS. KAPNER: I think that's a good idea, Your  
3 Honor.

4 THE COURT: And Ms. Attri?

5 MS. ATTRI: I agree.

6 THE COURT: All right. Is a month sufficient?

7 MS. ATTRI: Yes, Your Honor.

8 MS. KAPNER: Yes, I think that's fine.

9 THE COURT: All right. So, today is January 13th.  
10 February 13th is a Sunday, so by February 14th, you should  
11 file a joint letter docketed as a motion event. And if  
12 you've reached an agreement in principle, tell me that and  
13 ask that scheduling be held in abeyance. If you have not  
14 reached an agreement and, you know, rather than -- you can  
15 also request additional time. Alternatively, you can  
16 propose, jointly propose a briefing schedule on motions for  
17 summary judgment.

18 All right. Anything else before I conclude this  
19 proceeding?

20 MS. KAPNER: Your Honor, I just have a question;  
21 when we file the letter as a motion event, what event should  
22 we file it under? The letter event?

23 THE COURT: I will defer to my law clerk. I think  
24 you can just do motion miscellaneous, but he's more of an  
25 expert on that. Mr. Proujansky?

1 THE CLERK: If you were looking -- if it's to let  
2 the Court know that you've reached a settlement and probably  
3 a motion to adjourn, but if it was for a motion to set a  
4 briefing schedule, there may be, like, a motion to set a  
5 schedule. I'm not sure.

6 THE COURT: We can look into that --

7 MS. KAPNER: Okay.

8 THE COURT: -- and let you know. All right.  
9 Anything from Ms. Attri?

10 MS. ATTRI: Nothing further, Your Honor.

11 THE COURT: All right. In that case, I'm going to  
12 conclude this proceeding. Happy New Year to everyone. lease  
13 take care and stay safe. Goodbye.

14 MS. ATTRI: Thank you. Thank you.

15 (Proceedings adjourned at 4:30 pm)

16

17 TRANSCRIBER'S CERTIFICATE

18 I certify that the foregoing is a correct  
19 transcript from the electronic sound recording of the  
20 proceedings in the above-entitled matter.

21

22 Victoria Applegarth  
Victoria Applegarth, CER-1481

23

Legal Transcriber

24

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April 8, 2022

\_\_\_\_\_  
DATE